89- 1514

NO. A-532

Supreme Court, U.S.
FILED
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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

ENRIQUE POSADA, *Petitioner*

v.

DALLAS COUNTY CHILD WELFARE UNIT OF THE TEXAS DEPARTMENT OF HUMAN SERVICES, *Respondent*

Petition For A Writ Of Certiorari To The Supreme Court Of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether Section 11.16 of the Texas Family Code is repugnant to the due process clause of the 14th Amendment to the United States Constitution because the effect of it is to deny parents equal access to the appellate courts when their rights to their children have been terminated involuntarily.

II. May a State Court involuntarily terminate the parent-child relationship based on alternative findings which track the language of the alleged grounds for termination set out in its termination statute as opposed to specific findings or does this violate the parents due process rights under the 14th Amendment to the Constitution of the United States?

NAMES OF ALL PARTIES

The names of all parties to the proceeding in the court whose judgment is sought to be reviewed appear in the caption of this case.[1]

[1] Although not parties to the Bill of Review proceeding below the following were considered to be interested parties, to-wit: Linda Aland (Guardian ad litem of the children), Joe Deal Jones III (adoptive father of the subject children in a separate action), Maria Gloria Garza (natural mother of the children), A. P. Ted Calisi (court-appointed attorney ad litem), and the Attorney General of Texas (pursuant to Texas Civil Practice and Remedies Code, Chapter 37.006 relating to declaratory relief).

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II. To provide protection to parents from inefficient and arbitrary bureaucracies who terminate their parent-child relationships. 18

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Petition For A Writ Of Certiorari To The Supreme Court Of Texas

---

PETITION FOR A WRIT OF CERTIORARI

The petitioner Enrique Posada respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Texas entered in this proceeding on October 25, 1989 affirming the lower court's rulings.

OPINIONS BELOW

The judgment and opinion of the Court of Appeals which was not published is attached hereto as Appendix A. The DECREE OF TERMINATION containing the alternative findings is attached hereto as Appendix B.

JURISDICTION

The judgment of the Court of Appeals Fifth District of Texas at Dallas was entered on March 24, 1989. The application for writ of error to the Supreme Court of Texas was denied on September 20, 1989 (Appendix C) and a timely filed motion for rehearing was overruled on October 25, 1989 (Appendix D). This Court extended the time for filing a petition for writ of certiorari in this cause to and including February 22, 1990 (Appendix E). The petition for writ of certiorari was initially filed with a Motion For Leave to Proceed in Forma Pauperis on February 22, 1990 (Appendix F) but returned by the Clerk because the affidavit of indigency did not comply with Rule 39 (Appendix G). Changed

circumstances has made it possible to resubmit the petition without proceeding under Rule 39. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3) and any other constitutional right that petitioner is due under the Constitution of the United States. Also, jurisdiction may attach as stated in petitioner's Application for Extension of Time to Docket Appeal under 28 U.S.C. Section 1257(2).

CONSTITUTIONAL PROVISION, STATUTES AND RULES INVOLVED

U.S. CONSTITUTION. amend. XIV § 1

. . .

> No state shall make or enforce any law which shall abridge the privileges or the immunities of the citizens of the United States nor shall any state deprive any person of life, liberty, or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

. . .

TEXAS FAMILY CODE

§ 11.16 Copies of Decree

Copies of a decree of termination or adoption issued under Section 15.05 or Section 16.08 of this code are not required to be mailed to parties as provided in Rules 119a and 239a, Texas Rules of Civil Procedure.

Acts 1973, 63rd Leg., p. 1411, ch.543, § 1, eff. Jan. 1, 1974, Amended by Acts 1975, 64th Leg.p.1259, ch.476,§ 19, eff. Sept. 1, 1975.

§ 15.05 Decree

(a) If the court finds grounds for termination of the parent-child relationship, it shall enter a decree terminating the parent-child relationship.

§ 15.02 Involuntary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

TEXAS RULES OF COURT

Rule 329b. TIME FOR FILING MOTIONS

The following rules shall be applicable to motions for new trial and motions to modify, correct, or reform judgments (other than motions to correct the record under Rule 316) in all district and county courts:

(f) On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause, filed within the time allowed by law; . . .

STATEMENT OF THE CASE

Petitioner lived with Maria Gloria Garza with whom he fathered three children, the first

of whom, Enrique Posada, Jr. born on March 31, 1981, died. Maria Gloria Garza became mentally ill and the Dallas County Child Welfare Unit of the Texas Department of Human Services was appointed managing conservator of the two surviving siblings. Petitioner retained an attorney to file a paternity suit and his two children were legitimated in an interlocutory decree. For a few months Petitioner had possession of the children under strict "Welfare" supervision while he awaited a jury trial on his petition to be named their managing conservator. On the eve of the jury trial his attorney was allowed to withdraw from the case and it was reset. On the reset date of January 30, 1986 he appeared in Court, was served with a Petition to Terminate his Parent-Child Relationship, and was given the name of an attorney to go and see who could speak Spanish but was not told that the Court was appointing that attorney to represent him. He spoke to the attorney who requested a retainer that he did

not have. Over the next several months he tried to obtain an attorney unbeknownst that the appointed attorney was being paid by the County to represent him. Meanwhile he went to the parenting classes that had been scheduled for him by Child Welfare who had regained possession of the children about the time his retained attorney had withdrawn. Finally in March of 1987 he paid an attorney, Adelfa Callejo, $100 to investigate the status of his case and found out that his parent-child relationship had been terminated. Thereafter he also learned that it was too late to appeal the case, that the appointed attorney from whom he received no notice had made little effort on his behalf even failing to file an Answer to the termination proceeding, and that under Texas Law he was relegated to the strict requirements of a Bill of Review. He filed his Bill of Review as well as an Intervention in a pending adoption case. His allegations in the Bill of Review were supported by numerous exhibits and affidavits; however, it

was disposed of by the trial judge summarily in conjunction with a contest to his Intervention in the pending adoption case. Petitioner appealed both the dismissal of his Bill of Review and the dismissal of his Intervention in the adoption case. The adoption case was abated in the Court of Appeals awaiting the finality of this appeal from the dismissal of his Bill of Review (Appendix H). The adoptive parent, Joe Deal Jones, III, has been kept apprised of these proceedings through his attorney of record, James A. Frazier, which attorney filed a brief on his behalf in the Bill of Review appeal.

HOW FEDERAL QUESTION IS PRESENTED

The Federal Question was initially called to the attention of the trial court in Petitioner's Intervention in the adoption case which Intervention was also Exhibit E attached to and made a part of his Petition for Bill of Review and which prayed for the Court "*. . . to declare unconstitutional Section 11.16 of the TEXAS FAMILY CODE in its application to Enrique*

Posada as a denial of his rights to due process of law under both the Texas and United States Constitution: . . ."

At the only Hearing accorded Petitioner at the trial level which was a Motion to Strike his Intervention in the adoption case his counsel stated to the Court ". . . *We also feel that there has been a violation of due process in that his rights were not accorded as has been set out specifically in the Bill of Review, and the Bill of Review has been adopted by reference in our Intervention. I ask the Court to take judicial notice of that fact.*" STATEMENT OF FACTS October 20, 1987 (NO. 87-1086-X & 84-1095-X). The Court granted the Motion to Strike Plea in Intervention (Appendix I) and denied and dismissed the Petition for Bill of Review (Appendix J).

On January 19, 1988 Petitioner filed his MOTION TO MODIFY, CORRECT, AND REFORM THE JUDGMENT OF ADOPTION AND TO SET ASIDE THE ORDER STRIKING THE PLEADINGS OF ENRIQUE

POSADA, THE INTERVENOR AND BIOLOGICAL FATHER reiterating therein that ". . . *Intervenor has been denied his constitutional right to due process of law and implores the Court to reconsider the facts of this case as set forth in his Intervention filed on September 18, 1987 and the Bill of Review to which it relates filed contemporaneously therewith and incorporated by reference therein.*" This motion was overruled by operation of law without a Hearing on June 13, 1988.

The Federal Questions were again presented to the trial court in Petitioner's MOTION TO MODIFY, CORRECT, AND REFORM THE PRE-TRIAL ORDER ON ORIGINAL PETITION FOR BILL OF REVIEW. . . when he asked the court to reconsider the facts and evidence presented in his Petition for Bill of Review, to-wit: ". . . *1) that Petitioner had to take on the role of both parents to the children when their mother became mentally ill, satisfy the Case-Worker's stringent requirements of (a) attendance for meetings and*

(b) no overtime work so he could be with the children after 5:00 PM, and still pay an attorney to defend his position and legitimate his children; 2) that his attorney withdrew from the case on the eve of the trial on the merits as to managing conservatorship, which action was then abandoned altogether and replaced by an action by the Dallas County Child Welfare Unit of the Texas Department of Human Services as if it were a new action at a time when he could not afford legal services; 3) that he was represented at the termination hearing very poorly by a court-appointed attorney who was paid by the County unbeknownst to Petitioner who did not file even an Answer to the termination suit and who stated to the Court that he had had no communication with Petitioner at all (which statement Petitioner refutes) and who never informed Petitioner that his parent/child relationship had been terminated; 4) and that said facts constitute a denial of due process of law and is a strong indication that the

termination of Petitioner's parent/child relationship is not based on 'clear and convincing' evidence as required under Texas Law and Federal Law and therefore is a denial of Petitioner's constitutional right to possession of his children. . ." This request too was overruled by operation of law. At the Court of Appeals level Petitioner's Brief contained the following argument: ". . . *Appellant's constitutional rights have been brought into question and as the Supreme Court of Texas said in another termination case, IN THE INTEREST OF G.M. et al, Children, 596 SW2d 846, 1980, that termination is a drastic remedy and that termination proceedings must be proved by clear and convincing evidence. Appellant alleges that if given a trial on his Bill of Review Petition under the procedures outlined in Baker v Goldsmith the State cannot meet the standard of clear and convincing evidence to terminate his parent/child relationship with his children. . .*". Then on Motion for Rehearing Petitioner alleged

that "*The Court of Appeals has erred in failing to protect Appellant's Constitutional right to due process of law by apparently approving of the following fraudulent conduct of the DHR and the negligent conduct of the trial court in allowing the parade of procedural deficiencies in the underlying termination case, to-wit:. . .*" and then Petitioner proceeded to enumerate the procedural deficiencies in four paragraphs.[2] Said Motion for Rehearing was overruled without any opinion memorandum (Appendix K).

In his APPLICATION FOR WRIT OF ERROR to the Supreme Court of Texas Petitioner alleged that his constitutional rights had been brought into question with the same argument that he made in the Court of Appeals and then prayed

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[2] The four paragraphs initially contained incorrect page number references to the Transcript (erroneously picked up from the Adoption appeal) but was later corrected by Attachment to the MOTION TO EXTEND TIME FOR FILING APPLICATION FOR WRIT OF ERROR to the Supreme Court of Texas, (both transcripts on appeal contained the 86-page Petition for Bill of Review).

for in addition to the relief requested in conjunction with the merits of the Bill of Review "*for such other relief, in law and in equity, to which Petitioner may be entitled under the State and Federal Constitutions protecting his relationship with his children.*"

Said APPLICATION FOR WRIT OF ERROR was denied; however, by this time the Supreme Court of Texas had rendered a decision in *Beck v Beck*, 771 S.W.2d 141 (Tex. 1989) clarifying the *Baker v Goldsmith's* procedural requirements of a Bill of Review and limited the only relevant factor to be proved at Pre-trial to whether the Petitioner has presented prima facie proof of a meritorious defense. In a footnote in the *Beck* case and of significance to this case was the following message: "1. The issue of whether *Peralta v. Heights Medical Center, Inc.* 485 U.S. 80, 108 S. Ct. 896, 99 L. Ed. 2d 75 (1988) affects the requirement of a meritorious defense in this bill of review proceeding has not been fully briefed and argued, and we do not address it in

this case." In Petitioner's MOTION FOR REHEARING he tried to persuade the Court to apply the principle of the *Beck* case to this case and (referring to the *Peralta* footnote in the *Beck* case) further stated under Point One ". . . *With permission from this Court Petitioner would welcome an opportunity to brief and argue that issue in the parameters of this case.*"

Also in the MOTION FOR REHEARING under Point Two Petitioner brought the Federal Question to the Court in the following context: "*Since the Court has denied the Application for Writ of Error with the notation 'Writ Denied' indicating that it is not satisfied that the opinion of the court of appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error of law which requires reversal or which is of such importance to the jurisprudence of the State as to require correction, Petitioner prays that the Court reconsider in light of (1) the constitutional dimensions of the parent/child relationships, (2)*

the imbalance of power and resources available to the parties both of whom are representative of a large populace, and (3) a case of similar import involving the same Respondent, Dallas County Child Welfare, wherein six of the Judges Sitting In Banc dissented in favor of the broad and fundamental constitutional rights of parents to raise their children regardless of their rung in society, which case and dissent Petitioner respectfully prays this Court take Judicial notice. IN INTEREST OF S.H.A., 728 S.W.2d 73 (Tex.App.-Dallas 1987), Refused N.R.E." Further, Petitioner included in his PRAYER "*. . . relief, in law and in equity, to which Petitioner may be entitled under the State and Federal Constitutions protecting his fundamental rights to raise his children.*" Said MOTION FOR REHEARING was overruled without comment.

REASONS FOR GRANTING THE WRIT

I. This case presents an important question of due process because when a parent is to be deprived for all time of his fundamental

right to raise and know his children he should be given notice of every step in the litigation process, especially notice of the entry of a termination decree so that he can timely appeal on equal status with other litigants and not be relegated to the strict requirements of a Bill of Review. Accordingly, this Court should find that the following rule of law in the Texas Family Code should be found to be repugnant to the Fourteenth Amendment to the Constitution of the United States and therefore, invalid, to-wit: Section 11.16 of the Texas Family Code as set out on Page 4 herein. This is but another hue of the spectrum this Court wrote about in *Peralta v Heights Medical Center, Inc.*, 108 S.CT. 896 on February 24, 1988 when it found that the Bill of Review in Texas denied a litigant due process of law with its strict requirement of meritorious defense in a situation where the initial notice was defective.

The Family Law Section of the American Bar Association did such a magnificent job of

compiling all of the important constitutional questions akin to the issues in this case to show the repugnancy of various State laws in their relationship to fundamental rights of the family to raise their children that reference is here made for that broad purpose rather than try to quote the many important cases afforded by that article entitled DUE PROCESS AND THE TERMINATION OF PARENTAL RIGHTS, published in the Family Law Quarterly, Volume XIX, Number 3, Fall 1985.

II. Another reason the Court should grant the writ is to take Judicial Notice that the Respondent governmental agency is shown by its underlying documents included in Petitioner's Bill of Review pleadings to be haphazardly erroneous with its factual information. One of these questionable practices that can be readily seen herein by reference to Appendix B attached is that it prepares the Decree of Termination to indicate the findings of the Court in the

alternative instead of specific findings to support the termination. This was called to the attention of the Texas Courts but to no avail.

III. Finally, this Court is requested to take Judicial Notice of the following Texas Case involving the termination of parental rights for the reason that it involves as here the termination of rights based on the rung of the people involved in our society from a socio-economic standpoint. The case was heard *en banc* with a sharply divided court (7-6) for termination. The dissents are excellent in their argument for those in our society standing in shoes of equal status with your Petitioner herein. *In The Interest Of S.H.A.*, 728 S.W.2d 73 (Tex.App.--Dallas 1987), Writ refused, no reversible error.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in Dallas as affirmed by the Supreme Court of Texas.

Respectfully submitted,

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March 21, 1990

APPENDIX A

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

ENRIQUE POSADA,
APPELLANT,

V. NO. 05-88-00864-CV

DALLAS COUNTY CHILD
WELFARE UNIT,
APPELLEE.

JUDGMENT

In accordance with this Court's opinion of this date, the trial court's judgment is AFFIRMED; and

It is ORDERED that Dallas County Child Welfare Unit, appellee recover its costs of this appeal from Enrique Posada, appellant and General Indemnity Insurance Company, as surety on appellant's cost bond.

March 24, 1989.

/S/ James A. Baker
JAMES A. BAKER, JUSTICE

COURT OF APPEALS
FIFTH DISTRICT OF TEXAS
AT DALLAS

NO. 05-88-00864-CV

ENRIQUE POSADA,

APPELLANT,

V.

DALLAS COUNTY CHILD WELFARE UNIT,

APPELLEE.

FROM A DISTRICT COURT

OF DALLAS COUNTY, TEXAS

BEFORE JUSTICES McCLUNG,[1] BAKER AND KINKEADE
OPINION BY JUSTICE BAKER
MARCH 24, 1989

Enrique Posada appeals from the denial of his petition for a bill of review filed in connection with the termination of his parental rights. Posada alleges that he plead a meritorious defense and that the trial court

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[1]Justice McClung not participating.

erred in not granting the bill of review and in not accepting as prima facie evidence all of his sworn pleadings and attachments. Additionally, he attacks the underlying decree of termination which he claims fails to make specific findings as required by the Texas Family Code. We will affirm.

No findings of fact and conclusions of law were made by the trial court. In such a case, the trial court's judgment should be affirmed if it can be upheld on any legal theory that finds support in the evidence. Bishop v. Bishop, 359 S.W 2d 869, 871 (Tex. 1962). Our review is further limited because the record is incomplete. The transcript contains only excerpts of the underlying proceedings.

The Department of Human Resources (DHR) originally petitioned for Conservatorship of two children Posada had fathered. Posada filed a paternity suit in the same case. These children were legitimated as to him by a court order in 1984. In January 1986, the DHR filed its petition

to terminate the parental rights of both Posada and the natural mother. While in court at a hearing, Posada was personally served with citation and the petition for termination. An attorney was appointed to represent Posada in the termination proceeding. Posada's court appointed attorney appeared at the termination trial; Posada did not. At this trial, Posada's attorney indicated that he had been unsuccessful in contacting Posada either in person or by mail. In an exchange with the court, counsel for the DHR stated:

> MS. SARTIN: . . . [Posada] has had notice of this trial since January; he's been repeatedly notified that today is the day, In fact, he was notified that it was at nine-thirty this morning, and it is now eleven o'clock.
>
> THE COURT: Who notified him?
>
> MS. SARTIN: Your Honor, he was served with notice in a hearing in January; it should be on the Court's docket that Judge Moss notified him that the trial was that day. He was at the same time appointed Ted Calisi to

> represent him and his interests. We can show by testimony that he was notified as late as Friday that the trial was today; he's known about it for several months now and had ample opportunity to contact his attorney in preparation for this case.
>
> THE COURT: Did he appear before Judge Moss and Judge Moss advised him or notify him of the date of this hearing, that it was today and set for nine-thirty this morning?
>
> MS. SARTIN: Yes, Your Honor . . .

The Court proceeded with the trial. A final judgment terminating Posada's parental rights was signed August 1, 1986.[2] Posada learned of the termination on March 3, 1987. On September 18, 1987, Posada filed this petition for a bill of review to set aside the termination order. He asked for a trial on the merits and for his appointment as managing conservator of the children. Without holding a hearing, the trial court denied the bill of review.

---

[2] Adoption proceedings for the children were initiated on March 19, 1987.

Posada initially complains that the trial court erred in denying the petition for a bill of review because he plead a meritorious defense to the termination and was therefore entitled to "a trial on the merits as to the other requirements of a Bill of Review Petitioner by a preponderance of the evidence." We disagree.

Rule 329(f) of the Texas Rules of Civil Procedure provides: "On expiration of the time within which the trial court has plenary power, a judgment cannot be set aside by the trial court except by bill of review for sufficient cause. . . ." The Texas Supreme Court has recognized the extraordinary nature of a bill of review and has established narrow, strict criteria to define the term "sufficient cause." A petitioner must allege and prove the disputed judgment resulted from fraud, accident, or mistake, "without the negligence of the complainant either in the course of the former action or after the judgment." 4 R. MCDONALD, TEXAS CIVIL PRACTICE IN DISTRICT AND COUNTY COURTS §

18.29, at 386 (1984). A petitioner must also establish a meritorious defense. Baker v. Goldsmith, 582 S.W.2d 404, 406-07 (Tex. 1979); French v. Brown, 424 S.W.2d 893, 895 (Tex. 1967).

This burden of proof is onerous because of the strong deference accorded to finality of judgments. Court regard bills of review with extreme caution. See Baker v. Goldsmith, 582 S.W.2d at 409. The fact that there may have been injustice or even error in a former judgment is not, in itself, a ground for granting the bill of review. Alexander v. Hagedorn, 226 S.W.2d at 998. Additionally, a bill of review is not a "mere alternative" to a motion for new trial or to an appeal. Smith v. Smith, 468 S.W.2d 139, 141 (Tex. App.--Dallas 1971, no writ) (quoting 4 R. MCDONALD, TEXAS CIVIL PRACTICE IN DISTRICT AND COUNTY COURTS at § 18.27.6). The party seeking relief must show that he exercised diligence to avail himself of every means to set the judgment aside and that no

adequate remedy at law was available. Fender v. Moss, 696 S.W.2d 410, 412 (Tex. App.--Dallas 1985, writ ref'd n.r.e.); see French v. Brown, 424 S.W.2d at 895. Further, the party seeking relief is charged with knowledge of all facts which he could have discovered by diligence. French v. Brown, 424 S.W.2d at 896 (Smith J., concurring) (quoting 4 R. MCDONALD, TEXAS CIVIL PRACTICE IN DISTRICT AND COUNTY COURTS AT § 18.27.6).

Baker v. Goldsmith sets out the procedural steps involved in a bill of review. Before the equitable powers of a court may be invoked, a petitioner must allege factually and with particularity that the prior judgment: (1) was rendered as the result of fraud, accident or wrongful act of the opposite party or official mistake; (2) unmixed with the complainant's own negligence. The petition must also allege with particularity "sworn facts sufficient to constitute defense and, as a pretrial matter, present prima facie proof to support the contention." Baker, 582 S.W.2d at 408. This

burden required Posada to allege specific facts which would entitle him to judgment on retrial if no evidence to the contrary was introduced. Prima facie proof may consist of answers, affidavits on file, admissions, documents and other evidence the trial court may receive in its discretion. Whether this is accomplished is a question of law. Baker, 582 S.W.2d at 408-09.

We are not pursuaded that Posada has alleged facts which would excuse his failure to attend the termination hearing and his failure to take prompt action to set aside the termination decree. His pleading indicates that at the same time as the hearing was held he had a parenting class scheduled pursuant to instructions of the DHR case worker. He also claims that he was unaware the court had appointed counsel for him and that he tried repeatedly, for many months, to obtain counsel but was stymied due to financial problems. He did admit that he visited the office of his appointed attorney at least one time. Posada says he learned on March

3, 1987, that his parental rights had been terminated.

Assuming this sufficiently alleges the first step required by Baker, we find no evidence which alleges a meritorious defense. The petition and its attachments are drafted in conclusory form and, by and large, recite the historical sequence of events leading to the present action. See S.A.S. v. Catholic Family Services, Inc., 613 S.W.2d 540, 542 (Tex. App.--Amarillo 1981, no writ). Posada does allege that he would offer testimony to rebut certain claims made by DHR at the termination proceeding. However, none of his allegations contain any facts directly addressing the issue of whether Posada knowingly placed or allowed the children to remain in conditions or surroundings which endangered their physical or emotional well-being. None of his allegations address the issue of whether Posada engaged in conduct or knowingly placed the children with persons who endangered the physical or emotional well-being

of the children. His allegations recite a history of events and challenge certain selected parts of the caseworker's testimony in the original trial. These facts are not directly relevant to the allegations in the petition or to the findings of the court in the termination decree. See In re Baby Boy S, 635 S.W.2d 147, 149-50 (Tex. App.--Houston [1st Dist.] 1982, no writ). Posada's allegations are no more than complaints about the case worker's testimony and the attorney appointed to represent him in the original trial. None of this is material to to the issue of whether Posada has a meritorious defense to the grounds alleged for termination. See In re Baby Boy S, 635 S.W.2d at 150; S.A.S. v. Catholic Family Services, Inc., 613 S.W.2d at 542. We hold that Posada has totally failed to allege, with particularity, sworn facts sufficient to constitute a meritorious defense. We overrule point number one.

Posada next complains that the trial court was required to "accept as prima facie all of

Appellant's Bill of Review sworn pleadings including attachments." This is based on the fact, that other than filing some special exceptions, DHR did not answer Posada's bill of review. The only answer filed was a General Denial by the appointed Guardian ad Litem of the children. Posada claims his allegations should have been denied by a verified plea, and relies on Rule 93 of the Texas Rules of Civil Procedure.

Rule 93 does not require the respondent in a bill of review proceeding to file a verified pleading. A bill of review defendant may respond to the petitioner's allegations, but is not required to do so. See Baker, 582 S.W.2d at 409. Rather, petitioner's bill of review must rise and fall on its own merits. The initial inquiry is addressed to the pleading and supporting documentation of the petitioner. Baker, 582 S.W.2d at 408-09; Steward v. Steward, 734 S.W.2d 432, 435-36 (Tex. App.--Fort Worth 1987, no writ). If it determines that the pleadings pass muster, the court will set a

hearing and inquire further. See Steward, 734 S.W.2d 435-36. If not, denial without a hearing results. This interpretation is consistent with the supreme court's desire to avcid wasting valuable judicial resources on spurious cases. Baker, 582 S.W.2d at 408. Here the pleading, on its face, fails to properly allege the essential elements of a bill of review. See Steward, 734 S.W.2d at 435-36. Posada never invoked the trial court's equitable powers and all inquiry appropriately ended. We overrule point number two.

Lastly, Posada claims that the Decree of Termination does not contain specific findings as required by Section 15.02 (1) (D) and (E) of the Texas Family Code and by our decision in Juan A v. Dallas County Child Welfare, 733 S.W.2d 559, 560 (Tex. App.--Dallas 1986, no writ). Posada further argues that the judgment "shows on its face" that the termination was not based on clear and convincing evidence.

The bill of review "goes to the very foundation of the judgment, and does not involve

a revision of the judgment for errors committed." Winter Mut Aid Ass'n Circle No. 2, v. Reddin, 49 S.W.2d 1095, 1097 (Tex. Comm'n App. 1932, holding approved). The alternative findings contained in the termination decree are not an error which would cause us to vacate the judgment. See Juan A, 733 S.W.2d at 560. Additionally, in the absence of a complete record, we presume the trial court had clear and convincing evidence to support its judgment. See Maixner V. Maixner, 641 S.W.2d 374, 376 (Tex. App.--Dallas 1982, no writ). We overrule point number three.

The trial court's judgment is affirmed.

/S/ James A. Baker
JAMES A. BAKER
JUSTICE

DO NOT PUBLISH
TEX. R. APP.P. 90
88-00864.F

APPENDIX B

NO. 84-1095-X-305th

IN THE INTEREST OF	*	IN THE 305th
	*	DISTRICT COURT
ENRIQUE POSADA, JR.,	*	
ET AL	*	
aka ENRIQUE GARZA	*	OF
	*	DALLAS COUNTY,
CHILDREN	*	TEXAS

DECREE OF TERMINATION

On the 28th day of April, 1986, Petitioner, Dallas County Child Welfare Unit of the Texas Department of Human Service, appeared by its representative, Lisa Renne, and by attorney, Allison M. Sartin, Assistant District Attorney.

Respondent, Maria Gloria Garza appeared in person and by her attorney Fred Musacchio.

Respondent, Enrique Posada, did not appear in person, but appeared only by attorney, A.P. Ted Calisi, appointed by the Court on February 3, 1986, to represent Enrique Posada.

Also appearing was, Linda Aland, appointed by the Court as Guardian Ad Litem of the children the subjects of this suit.

The Court, having examined the pleadings and heard the evidence and argument of counsel, finds that it has jurisdiction of this cause and of all the parties and that no other Court has continuing exclusive jurisdiction of this cause. A jury was waived, and all matters in controversy, including questions of fact and of law, were submitted to the Court. All persons entitled to citation were properly cited.

The Court finds that the following children is the subject of this suit:

NAME:	ENRIQUE POSADA, JR. aka ENRIQUE GARZA
SEX:	Male
DATE OF BIRTH:	August 21, 1982
PLACE OF BIRTH:	Dallas County, Texas
NAME:	MELISSA GARZA
SEX:	Female
DATE OF BIRTH:	SEPTEMBER 29, 1983
PLACE OF BIRTH:	Dallas, County, Texas

The Court finds that Enrique Posada, the father of the children, the subject of this suit, has knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children, and she has engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children.

The Court also finds that termination of the parent-child relationship between Enrique Posada, the father, and the children, the subject of this suit, is in the best interest of the children.

IT IS, THEREFORE, ORDERED AND DECREED by the Court that the parent-child relationship between Enrique Posada, the father, and the children, the subject of this suit, be and it is hereby terminated.

The Court finds that Maria Gloria Garza, the mother of the children, the subject of this suit, has knowingly placed or knowingly allowed the

children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children, and he has engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children.

The Court also finds that termination of the parent-child relationship between Maria Gloria Garza, the mother, and the children, the subject of this suit, is in the best interest of the children.

IT IS, THEREFORE, ORDERED AND DECREED by the Court that the parent-child relationship between Maria Gloria Garza, the mother, and the children, the subject of this trial, be and it is hereby terminated.

The Court also finds that it is in the best interest of the children subject of this suit that all actions by the court in this cause as to Respondent, Enrique Posada, be severed from those of Respondent, Maria Gloria Garza.

IT IS, THEREFORE, ORDERED AND DECREED by the Court that all actions under this cause as to Respondent, Enrique Posada, be and are hereby severed.

On the 17th day of July, 1986, after having been reset by the Court, trial of this cause continued.

Appearing were Petitioner, represented by Lisa Renne and by attorney, Allison M. Sartin; and Respondent, Maria Gloria Garza represented by attorney Fred Musacchio.

Also appearing was, Linda Aland, appointed by the Court as Guardian Ad Litem of the children, subjects of this suit.

The Court finds that termination of the parent-child relationship between Maria Gloria Garza, the mother, and the children, the subjects of this suit, is in the best interest of the children.

IT IS, THEREFORE, ORDERED AND DECREED by the Court that the parent-child relationship between Maria Gloria Garza, the mother, and the

children, the subjects of this suit be and it is hereby terminated.

The Court further finds that the best interest of the children, Enrique Posada, Jr. aka Enrique Garza and Melissa Garza will be served be appointing the Director of the Dallas County Child Welfare Unit of the Texas Department of Human Services as Managing Conservator.

IT IS, THEREFORE, ORDERED AND DECREED by the Court that the Director of the Dallas County Child Welfare Unit of the Texas Department of Human Services be and is hereby appointed Managing Conservator of the children, Enrique Posada, Jr. aka Enrique Garza and Melissa Garza.

The Managing Conservator shall have all the rights, privileges, duties, and powers enumerated in Section 14.02 of the Texas Family Code, as amended, this does include the right to consent to adoption. The Managing Conservator shall on each yearly anniversary of this Order, file with the Court a report of facts concerning

the child's welfare, including his whereabouts and physical condition.

SIGNED THIS THE 1st DAY OF August, 1986.

(signed) K. Baker

Judge Standing for the 305th District Court of Dallas County, Texas

Judge of the 290th Sitting for the 305th District Court